

C15-2011-0057
ROW-10574547
TP-0235010311

CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
INTERPRETATIONS
PART I: APPLICANT'S STATEMENT
(Please type)

STREET ADDRESS: 6619 Argentia Road

LEGAL DESCRIPTION: Subdivision – Allandale Terrace Section 2

Lot (s) 30 Block D Outlot _____ Division _____

ZONING DISTRICT: SF-2

I/WE Cynthia B. Keohane on behalf of myself/ourselves as authorized

Agent for Allandale Neighborhood Association that on the 31st Day of March,
2011, hereby apply for an interpretation hearing before the Board of Adjustment.

Planning and Development Review Department interpretation is:

In his letter of March 12, 2011 to Ms. Leslie D. Rosenstein, 6619 Argentia Road, Austin, Tx 78757 (Attachment B: Guernsey Interpretation Letter), Director Guernsey states: "[1] A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. [2] While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations, can make the minor conflicts often experienced by all neighbors more difficult to resolve." This appeal addresses the second portion of the determination, that "the frequent rental of a single family home for short durations" is classified as a single family residential use.

I feel the correct interpretation is: The transient rental (30 days or less) of a single family home in residential zoning is not an allowed residential use as found in City Code 25-2-3 (A) and (B). (See Attachment A: City Codes.)

SF-2

NOTE: The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: Director Guernsey's letter states that transient uses are classified as single family residential uses, but transient use is not allowed for single family residential use.

A use whereby a single family house is owned for investment purposes (i.e. not homesteaded) and rented out for short periods of time (e.g. nightly) for a consideration is a transient use and thus should not be classified as a residential use because it does not satisfy the criteria in Land Development Code 25-2-32 - Residential Uses Described (A) where residential use is described as "occupancy of living accommodations on a non-transient basis". Note that we would differentiate this from the case where the primary use is non-transient because the single-family home is homesteaded and occupied by the owner but may be rented out temporarily while the owner/occupant is away on vacation.

The meaning of transient: City Code 25-12-1 (A) states that "the 2009 International Building Code published by the International Code Council is adopted and incorporated into this section". b) Section 310.2 of the 2009 IBC defines "transient" as "occupancy of a dwelling unit or sleeping unit for not more than 30 days."

By calling short term rentals a valid residential use, Director Guernsey denies to STR renters the protections of city code provided to renters of bed and breakfast facilities, hotels and motels. This circumvents *the intent of city code* to protect the health and safety of Austin visitors, for example, requirements for smoke alarms as stated in Chapter 25-12 Technical Codes for R-1 uses. (See Attachment A City Codes Chapter 25-12)

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: all owner-occupied and long-term rentals will continue to be a permissible use if this appeal is upheld.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: all owner-occupied and long-term rentals will continue to be a permissible use if this appeal is upheld.

APPLICANT/AGGRIEVED PARTY CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Cynthia B. Keohane Printed Cynthia B. Keohane

Mailing Address 5702 Wynona Ave.

City, State & Zip Austin TX 78756 Phone 512-371-3853

OWNER'S CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____ Printed _____

Mailing Address _____

City, State & Zip _____ Phone _____

Cynthia Keohane
5702 Wynona Avenue
Austin, TX 78756

March 31, 2011

Board of Adjustment
City of Austin
P.O. Box 1088
Austin, TX 78767

Re: Standing as Interested Party for Appeal of Interpretation Dated March 12, 2011

Dear Chair and Members of the Board of Adjustment,

I meet the requirements of 25-1-131 as an Interested Party:

- I am the President of the Allandale Neighborhood Association (ANA)
- The administrative decision of March 12, 2011 by Director Guernsey was addressed to an ANA member residing within the boundaries of ANA
- The membership of ANA has authorized the appeal of this administrative decision/use classification determination in a formal resolution at its meeting on March 24, 2011.

My phone number is 512-371-3853.

Sincerely,



Cynthia Keohane, President, Allandale Neighborhood Association

Attachment A: City Codes

25-2-1 USE CLASSIFICATIONS. This article describes and classifies uses in the zoning jurisdiction. The major use categories are residential, commercial, industrial, civic, and agricultural.

25-2-2 DETERMINATION OF USE CLASSIFICATION.

(A) The director of the Neighborhood Planning and Zoning Department shall determine the appropriate use classification for an existing or proposed use or activity.

(B) In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.

(C) An interested party may appeal a determination of the director of the Neighborhood Planning and Zoning Department under this section to the Board of Adjustment.

(D) The director of the Neighborhood Planning and Zoning Department shall notify the Planning Commission and the Zoning and Platting Commission of the filing of an appeal within 30 days of the filing, and of the disposition of the appeal within 30 days of disposition.

(E) The director of the Neighborhood Planning and Zoning Department shall maintain a list of determinations made under this section.

25-2-3 RESIDENTIAL USES DESCRIBED.

(A) Residential uses include the occupancy of living accommodations on a nontransient basis. Residential uses exclude institutional living arrangements providing 24-hour skilled nursing or medical care and those providing forced residence, including mental hospitals and prisons.

(B) Residential use classifications are described as follows:

(1) **BED AND BREAKFAST RESIDENTIAL** use is the use of a residential structure to provide rooms for temporary lodging for overnight guests on a paying basis.

(2) **CONDOMINIUM RESIDENTIAL** use is the use of a site for attached or detached condominiums, as defined in the Texas Property Code.

(3) **CONSERVATION SINGLE FAMILY RESIDENTIAL** use is the use of a site for multiple detached dwelling units with each dwelling unit located on an individual lot and the remainder of the site being jointly-owned and preserved as open space.

(4) **DUPLEX RESIDENTIAL** use is the use of a site for two dwelling units within a single building, other than a mobile home.

(5) **GROUP RESIDENTIAL** use is the use of a site for occupancy by a group of more than six persons who are not a family, on a weekly or longer basis. This use includes fraternity and sorority houses, dormitories, residence halls, and boarding houses.

(6) **MOBILE HOME RESIDENTIAL** use is the use of a site for occupancy of mobile homes on a weekly or longer basis. This use includes mobile home parks and mobile home subdivisions.

(7) **MULTIFAMILY RESIDENTIAL** use is the use of a site for three or more dwelling units, within one or more buildings, and includes condominium residential use.

(8) **RETIREMENT HOUSING (LARGE SITE)** use is the use of a site for more than 12 dwelling units designed and marketed specifically for the elderly, the physically handicapped, or both.

(9) **RETIREMENT HOUSING (SMALL SITE)** use is the use of a site for 3 to 12 dwelling units designed and marketed specifically for the elderly, the physically handicapped, or both.

(10) **SINGLE-FAMILY ATTACHED RESIDENTIAL** use is the use of a site for two dwelling units, each located on a separate lot, that are constructed with common or abutting walls or connected by a carport, garage, or other structural element.

(11) **SINGLE-FAMILY RESIDENTIAL** use is the use of a site for only one dwelling unit, other than a mobile home.

(12) **SMALL LOT SINGLE-FAMILY RESIDENTIAL** use is the use of a small lot for only one detached dwelling unit, other than a mobile home.

(13) **TOWNHOUSE RESIDENTIAL** use is the use of a site for townhouses.

(14) **TWO-FAMILY RESIDENTIAL** use is the use of a lot for two dwelling units, each in a separate building, other than a mobile home.

amendments in Subsection (B) and Section 25-12-3 (Local Amendments to the Building Code).

25-12 TECHNICAL CODES

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the International Residential Code in accordance with Section 101.2 (*Scope*).

Residential occupancies shall include the following:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

- Boarding houses (transient)

- Hotels (transient)

- Motels (transient)

- Bed and breakfasts

Congregate living facilities (transient) with 10 or fewer occupants are permitted as an alternate method of compliance to comply with the construction requirements for Group R-3 including Section 903.2.8 (*Group R*).

907.2.8.2 Automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.5 (*Occupant notification systems*) shall be installed throughout all group R-1 occupancies. Listed system-type automatic detectors shall be installed within interior corridors serving sleeping units and within common areas such as, recreational rooms, laundry rooms, furnace rooms, and similar areas served by such interior corridors providing access to and egress from sleeping units.

Attachment B: Guernsey Interpretation Letter



PLANNING AND DEVELOPMENT REVIEW DEPARTMENT
P.O. Box 1088
Austin, TX 78767

Ms. Leslie D. Rosenstein
6619 Argentia Road
Austin, TX 78757

March 12, 2011

Dear Ms. Rosenstein,

Thank you for your recent letter regarding short-term residential leases and vacation rentals by owner. I am responding on behalf of Mayor Lee Leffingwell and the City Council.

As you know, the Codes and Ordinances Committee of the Planning Commission and the full Planning Commission heard input on the issue and directed staff to continue to examine the issues related to short-term residential leases and vacation rentals by owner. As follow-up to those discussions, the January 27, 2011, meeting was held in order to allow property owners, neighbors and other concerned citizens an opportunity to express their views and make suggestions on how to move forward. We apologize for the conflict with the event at Palmer Auditorium and for not communicating the availability of parking at One Texas Center.

The issue is posted for discussion at the March 15th Codes and Ordinances Subcommittee meeting. During this meeting, staff will provide an update on the status of the proposed amendment, and legal staff will be present to discuss the classification of short term residential rentals in the land development code. The meeting will begin at 6:00 p.m., and will be held at One Texas Center, Room 325. A surface parking lot located at the front of the building, and a parking garage located to the rear of the building are available and offered to the public free of charge.

The Code Compliance Division continues to enforce all applicable regulations regarding residential housing. A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations, can make the minor conflicts often experienced by all neighbors more difficult to resolve.

Staff is working to develop recommendations to facilitate the resolution of these issues and policies to support the livability of Austin's neighborhoods.

We welcome your continued input on this issue. If you have any further questions, you may contact Robert Heil, Senior Planner, Planning and Development Review Department, at 974-2330.

Sincerely,

Greg Guernsey, Director
Planning and Development Review Department

x: Sue Edwards, Assistant City Manager
Jerry Rusthoven, PDRD

Robert Heil, PDRD

SHORT TERM RENTALS IN FAMILY-ORIENTED NEIGHBORHOODS

Short term house rentals (STRs) have proliferated in many family-oriented Austin neighborhoods, including the Allandale neighborhood. Since the rentals are often for just a few days and the owners do not live on site, STRs seriously threaten family-oriented neighborhoods.

Neighbors have to deal with excessive noise, litter, heavy traffic, and a steady flow of strangers. STRs are full-fledged hotel-motel businesses masquerading as vacation home rentals. They are incompatible with family oriented neighborhoods. Under a Plain English reading, these rentals violate existing Austin land-use policies and zoning ordinances. The City of Austin must immediately enforce existing laws and close the offending businesses.

What are short term rentals (STRs)?

We define Short Term Rentals as houses that

- Are rented for less than 30 days.
- Are not the legal and primary residence of the owners or occupants.

A more colloquial description:

- The short rental periods are at the center of our concerns. STRs are generally rented for a few days or a week. As a result, short-term rentals function like a motel. The renters often come to Austin for UT football games, ACL, SXSW, or just to have a party. This is very different from long-term renters using rental houses as their homes.
- STRs are full-fledged businesses, not mom & pop enterprises. They are leased through internet web sites listing accommodations worldwide.
- Owners often have a large string of houses used for STRS:

- o One Allandale couple owns at least four STRs in Austin.
 - o Another Allandale couple owns at least seven STRs.
 - o And yet another couple owns at least twelve STRs.
- Together these three businesses own at least five of the STRs in Allandale.

A major cause of the problems with STRs is that they are not the customary residence of the owner. Owners of short term rentals are absentee landlords. They do not monitor the behavior of the renters or take care of the property on a daily basis. STRs are less well monitored than a B&B, whose owner must live on site. In some ways they are even worse than a motel, which is monitored 24/7 by the owner or employees, and required by law to have a desk agent on duty.

What are our specific complaints?

- Without effective monitoring there is much potential for abuse of both the rented house and the neighborhood.
- Neighbors of STRs in Allandale have had to repeatedly deal with
 - o Late and excessive noise,
 - o Unkempt lawns, litter and overflowing trash,
 - o Massive parking and blocking of right of way,
 - o Home invasions by lost renters
 - o Late night, heavy and speeding vehicular traffic,
 - o Verbal abuse and bullying of neighbors by STR owners,
 - o A steady flow of strangers in the neighborhood,
 - o Lack of building code compliance, State health and CoA Fire Department inspections.
 - o Our older residents and parents with young children are particularly distressed by these abuses.

What does the ANA want in regard to STRs?

STRs should be forbidden from family-oriented neighborhoods, especially those with many children and those with older, retired couples. Currently such neighborhoods are often zoned SF and MF.

- We do not wish to restrict B&B'S, retirement housing or normal residential uses.
- We do not wish to restrict long-term leasing or rentals of homes.
- We do not wish to restrict people who rent their primary residence for short periods of time, for example during SWSX or while they are on sabbaticals or short vacations.
- We do not wish to restrict low-impact businesses run from peoples' primary residences.

Is our goal consistent with City of Austin land use policy?

CoA land use policy is described in "City of Austin Guide to Land Use Standards" (May 2008).

One principle of CoA land use policy is

"Minimize negative effects between incompatible land uses."

Land use policy for single family and two family uses includes:

"Preserve the land use pattern and future viability of existing neighborhoods"

"Protect residential neighborhoods from incompatible business or industry and the loss of existing housing."

STRs are incompatible with CoA land use standards because they change existing land use patterns from family oriented to a mix of family-oriented and commercial use.

STRs change the land use patterns of existing family-oriented neighborhoods.

Do we wish a major change to City of Austin Code?

It is our position that existing CoA code already forbids STRs in family oriented neighborhoods.

STRs satisfy the definition of hotel/motel/boarding house several places in existing city code, in state code, and IRS tax code. Note that City code explicitly recognizes that rentals over 30 days are not HOTEL-MOTEL uses.

25-2-4 COMMERCIAL USES DESCRIBED

(A) (35) "HOTEL-MOTEL use is the use of a site for the provision of rooms for temporary lodging. This use includes hotels, motels, and transient boarding houses.

11-2-1 DEFINITIONS

(3) HOTEL means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or other building where a room is furnished for a consideration, but does not include a hospital, sanitarium, or nursing home.

11-2-2 (B) this chapter does not impose a tax on:

(1) a person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period.

Existing CoA code explicitly forbids HOTEL-MOTEL use in family oriented neighborhoods, including all SF and MF zones. STRs are a HOTEL-MOTEL use and are, therefore, forbidden.

25-2-3 RESIDENTIAL USES DESCRIBED.

(A) Residential uses include the occupancy of living accommodations on a non-transient basis. Residential uses exclude institutional living arrangements providing 24-hour skilled nursing or medical care and those providing forced residence, including mental hospitals and prisons.

(B) Residential use classifications are described as follows:

(1) BED AND BREAKFAST RESIDENTIAL use is the use of a residential structure to provide rooms for temporary lodging for overnight guests on a paying basis (25-2-782 Owner must reside on site).

Existing CoA code explicitly forbids HOTEL-MOTEL use in family oriented neighborhoods, including all SF and MF zones. STRs are a HOTEL-MOTEL use and are, therefore, forbidden.

25-2-491 PERMITTED, CONDITIONAL, AND PROHIBITED USES: See ZONING USE SUMMARY TABLE (LAND DEVELOPMENT CODE) FOR PERMITTED USES IN ALL SF AND MF ZONED AREAS.

What exactly do we want?

- We want the City of Austin land use policy to be followed so that our family oriented neighborhood is not damaged by incompatible commercial uses.
- We want the City of Austin to recognize the plain English meaning of the existing code that explicitly states that STRs satisfy the definition for HOTEL/MOTEL use and are covered by existing CoA codes forbidding HOTEL/MOTEL use in SF and MF zones.
- We want the City of Austin to require STRs to comply with code and cease rentals of less than 30 days.

- We do not want existing STR operations to be 'grandfathered'

Position Paper prepared by the Short Term Rental Committee, formed by the Executive Committee of the Allandale Neighborhood Association. Dec. 16, 2010, rev. February 7, 2011

David Orshalick
2710 West 49th ½ Street
Austin, TX 78731

April 21, 2011

Board of Adjustment
City of Austin
P.O. Box 1088
Austin, TX 78767

Re: Case #C15-2011-0037 Interpretation Appeal by Cynthia Keohane
Case #C15-2011-0038 Interpretation Appeal by Leslie Rosenstein

Dear Chair and Members of the Board of Adjustment,

I am writing in support of the above-referenced appeals. On March 12, Director Guernsey made a Use Classification Determination that affects *every resident in Austin*. He ruled that "the frequent rental of a single family home for short durations" is classified as a single-family residential use. In other words, transient (30 days or less) rentals in residential zoning are classified as single family residential uses in Code.

This determination disregards the intent and purpose of City Code, PDR's *Neighborhood Planning Guide*, and the *Imagine Austin* Comprehensive Plan's *Vision Statement*. It corrupts the character of our family-oriented neighborhoods and opens the floodgates to transient rentals perpetually hosting new "guests" at the expense of residents. Creation of a new undefined transient residential use also removes countless homes from the housing stock.

Preservation of our neighborhoods—our most important asset and what makes Austin such a desirable place to live—is at the core of the residential zoning Codes. For example, City Code 25-2-51 states that the purpose of the residential district is to "reserve areas for residential occupancy". Short-duration stays are, by definition, not "residential" in nature; if someone stays short term in a house, they do not live there—they are merely visiting.

City Code 25-2-3 states that residential uses include the "occupancy of living accommodations on a nontransient basis", and that "single-family residential use is the use of a site for only one dwelling unit". Transient occupancy does not constitute a residential use according to City Code.

If these Code sections are not clear enough, the PDR *Neighborhood Planning Guide Land Use Standard* declares its purpose as a "framework for decision making" that offers "guidance to city staff, Planning Commission, City Council, developers, neighbors, and others on what kinds of land uses are encouraged or discouraged in a particular area." For residential zoning, the *Planning Guide* states that the purposes of "single family detached or two family residential uses" are to "**preserve the future viability of existing neighborhoods**" and to "**protect residential neighborhoods from incompatible business and the loss of existing housing**". The *Planning Guide* also states general land use planning principles that include: ensuring an "adequate and diverse supply of housing for all income levels", minimizing "negative effects between incompatible land uses", and avoiding creating "undesirable precedents". This determination completely disregards City Code and the PDR *Planning Guide*.

Article 2 of the BOA Rules of Procedure requires three findings in order for the BOA to grant this Use Classification Determination appeal: (1) a reasonable doubt or difference of

interpretation of Code, (2) an interpretation that will not grant a special privilege, and (3) use provisions which are in character with the uses and objectives of the district in question.

Evidence for finding (1) was briefly presented above and is presented in much more detail in *Attachment A: Brief Summary of Restrictions* and in *Attachment B: Code Restrictions on "Transient Residential" Uses*.

For finding (2), granting this appeal removes the special privilege conferred on transient rental property owners by this Use Classification Determination. Transient rentals are unregulated whereas their competitors (B&B's, rooming and boarding houses, hotels) are regulated and supervised. There are no inspectors assigned, and no regulations in force, for the use of transient rentals in residential zoning, so this determination ignores health and safety concerns addressed by licensed and regulated competitors. In addition, this unfair and unregulated competition may damage hotels, cost the City in revenue and increased costs, and endanger the public.

Neither the City nor transient rental property owners can guarantee the peaceful and quiet enjoyment of our neighborhoods as indicated by a long list of unresolved 311 complaints. These commercial uses will always be a nuisance in our neighborhoods regardless of new regulations. The burden and cost of enforcement shifts to the City at the expense of residents and to the benefit of transient rental property owners. A true and full accounting of these costs, as well as a cost/benefit analysis, should have been undertaken before making this determination and granting this special privilege.

Unsupervised and unregulated transient rentals are not—and never have been—an allowed single-family residential use. However, it is reasonable to allow property owners to occasionally rent out their own houses during events such as SXSW or to swap houses for short vacation stays. In order to protect and preserve the character and safety of our neighborhoods, safeguards must be in place. *Attachment C: Draft Model Ordinance—Owner-Occupied Transient Rental Use* was crafted to allow home owners flexibility in the use of their property while causing the least amount of disruption and burden to adjacent residents. (It has been sent to the Planning Commission for review and consideration.) Rental of residential property for more than 30 days (nontransient) is not covered by this model ordinance since it is already an allowed residential use in City Code.

For finding (3), granting this appeal maintains the uses enumerated in City Code 25-2-3 and does not create a new use that is out of character with the uses and objectives of residential zoning. Also, transient rental property owners will not be denied these existing uses under Code since they can simply rent their residential structures on a nontransient (more than 30 days) basis.

Today there are 10 B&B's in Austin, but, due to the efficiency of Internet marketing, there are hundreds of transient residential rentals. In five years there will be thousands if this determination is allowed to stand. Mr. Guernsey erred in his determination. We ask that you preserve the neighborhood character of Austin as required by City Code. Thank you for your consideration and your service to Austin.

Sincerely,



David Orshalick

Attachment A: Brief Summary of Restrictions

Find an expansion of this in *Attachment B: Code Restrictions on "Transient Residential" Uses*.

Excerpt	Source
TRANSIENT. Occupancy of a dwelling or sleeping unit for not more than 30 days .	2009 International Building Code, Section 310.2 Definitions. City Code 25-12-1 BUILDING CODE. (A) The 2009 International Building Code is adopted and incorporated into this section.
"Residential" does not have the character of a facility used for the accommodation of transient guests .	Texas Local Government Code, Chapter 214 MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES. Sec. 214.211
The purposes of the residential district: reserve areas for residential occupancy consistent with the Comprehensive Plan and standards of public health, safety, and welfare.	City Code 25-2-51 PURPOSES OF RESIDENTIAL DISTRICTS
Residential uses include the occupancy of living accommodations on a nontransient basis .	City Code 25-2-3 RESIDENTIAL USES DESCRIBED.
(11) SINGLE-FAMILY RESIDENTIAL use is the use of a site for only one dwelling unit .	City Code 25-2-3 RESIDENTIAL USES DESCRIBED.
In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall consider the characteristics of the proposed use and the similarities , if any, of the use to other classified uses.	City Code 25-2-2 DETERMINATION OF USE CLASSIFICATION.
While these uses are still classified as single family residential uses , the frequent rental of a single family home for short durations, . . .	Use Classification Determination letter of March 12, 2011 by PDR Director Guernsey
Single family detached or two family residential uses. Purpose. (1) Preserve the future viability of existing neighborhoods ; (3) Protect residential neighborhoods from incompatible business and the loss of existing housing .	City of Austin Neighborhood Planning Guide Land Use Standard May 2008.
Land Use Planning Principles. (2) Ensure an adequate and diverse supply of housing for all income levels; (3) Minimize negative effects between incompatible land uses; (13) Avoid creating undesirable precedents.	City of Austin Neighborhood Planning Guide Land Use Standard May 2008.
Austin is livable. One of Austin's foundations is its safe, well-maintained, stable, and attractive neighborhoods . . . where community needs and values are recognized. . . . Development occurs . . . while protecting and enhancing neighborhoods People across all parts of the city and of all ages and income levels live in safe, stable neighborhoods .	Imagine Austin Comprehensive Plan Vision Statement.

Attachment B: Code Restrictions on “Transient Residential” Uses

On March 12, PDR Director Greg Guernsey made a Use Classification Determination stating that “the frequent rental of a single family home for short durations” is classified as a single-family residential use. This determination disregards the intent and purpose of City Code as well as PDR’s *Neighborhood Planning Guide*. It corrupts the character of family-oriented neighborhoods and opens the floodgates to transient rentals perpetually hosting new “guests” at the expense of residents. This determination is clearly outside the concept of “residential” zoning.

The following table presents the relevant City Code and supporting materials showing that unsupervised and unregulated transient rentals are not—and never have been—an allowed single-family residential use.

Source Material	Commentary
<p>City Code 1-1-3 WORDS AND PHRASES. (A) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. (B) Words and phrases that have acquired a technical or particular meaning, whether by definition or otherwise, shall be construed accordingly.</p>	<p>In any statutory interpretation, the plain meaning of ordinary English words in their ordinary senses is assumed.</p>
<p>Dictionary.com definitions:</p> <p><i>Residential</i>—suited for or characterized by private residences: <i>a residential neighborhood</i>; relating to or having residence.</p> <p><i>Residence</i>—the place, especially the house, in which a person lives or resides; dwelling place.</p> <p><i>Reside</i>—to dwell permanently or for a considerable time.</p> <p><i>Dwell</i>—to live or stay as a permanent resident.</p> <p><i>Dwelling</i>—a building or place of shelter to live in; place of residence; abode; home.</p>	<p>Short-duration stays are, by definition, not “residential” in nature. The term “short-term residential” as a use or rental is an oxymoron. If someone stays short term in a house, then they do not live there—they are not using it as their residence. An easy test of “residency” is to ask where a person votes.</p>
<p>City Code 25-12-1 BUILDING CODE. (A) The 2009 International Building Code published by the International Code Council is adopted and incorporated into this section.</p> <p><i>2009 International Building Code, Section 310.2 Definitions. TRANSIENT. Occupancy of a dwelling or sleeping unit for not more than 30 days.</i></p>	<p>The <i>2009 International Building Code</i> is made part of City Codes and clearly defines the word “transient” as 30 days or less.</p>

Source Material	Commentary
<p>Texas Local Government Code, Chapter 214 MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES. Sec. 214.211 DEFINITIONS. (3) "Residential" means having the character of a detached one-family or two- family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that does not have the character of a facility used for the accommodation of transient guests. (5) "Commercial" means a building for the use or occupation of people for: (A) a public purpose or economic gain.</p>	<p>This state statute covers the building of residentially zoned structures with the clear expectation that those structures will be used for nontransient purposes. In other words, when a residential building permit is issued, the resulting use is intended to be nontransient. In fact, transient rentals are defined as a "commercial" use by this section of state statute.</p>
<p>City Code 25-2-51 PURPOSES OF RESIDENTIAL DISTRICTS. The purposes of the residential district designations are to: (1) reserve areas for residential occupancy and provide for a broad range of residential densities and variety of housing types consistent with the Comprehensive Plan and standards of public health, safety, and welfare; (2) ensure adequate light, air, privacy, and open space for each dwelling; (3) encourage compatibility between residential uses and other land uses.</p>	<p>The clear purpose of residentially-zoned structures is for residential occupancy, not transient occupancy. The latest Vision Statement for the Comprehensive Plan precludes transient rentals as a residential use.</p> <p>Transient rentals of residential structures are an incompatible use in residential zoning. They detract from the character of family-oriented neighborhoods; threaten the health, safety, welfare, and privacy of residents; displace families; remove housing stock; and cater to non-residents who have little incentive to be good neighbors.</p>

Source Material	Commentary
<p>City Code 25-2-1 USE CLASSIFICATIONS. The major use categories are residential, commercial, industrial, civic, and agricultural.</p> <p>City Code 25-2-3 RESIDENTIAL USES DESCRIBED.</p> <p>(A) Residential uses include the occupancy of living accommodations on a nontransient basis.</p> <p>(B) Residential use classifications are described as follows:</p> <ol style="list-style-type: none"> (1) BED AND BREAKFAST RESIDENTIAL (2) CONDOMINIUM RESIDENTIAL (3) CONSERVATION SINGLE FAMILY RESIDENTIAL (4) DUPLEX RESIDENTIAL (5) GROUP RESIDENTIAL (6) MOBILE HOME RESIDENTIAL (7) MULTIFAMILY RESIDENTIAL (8) RETIREMENT HOUSING (LARGE SITE) (9) RETIREMENT HOUSING (SMALL SITE) (10) SINGLE-FAMILY ATTACHED RESIDENTIAL (11) SINGLE-FAMILY RESIDENTIAL use is the use of a site for only one dwelling unit, other than a mobile home. (12) SMALL LOT SINGLE-FAMILY RESIDENTIAL (13) TOWNHOUSE RESIDENTIAL (14) TWO-FAMILY RESIDENTIAL 	<p>Non-residential uses, such as transient rentals, are allowed in other major use categories.</p> <p>Of these 14 defined residential uses in the list of residential use classifications, all but two are nontransient. Yet even these two—Bed and Breakfast Residential and Group Residential—are heavily regulated by other Code provisions and require the owner or owner's agent to reside permanently (have a nontransient presence) on the property.</p> <p>While an unregulated and unsupervised <i>transient</i> use is not allowed by Code, <i>nontransient</i> residential rentals are, and always have been, an allowed residential use. Nothing in Code prevents residential property owners from renting their property on a nontransient basis: greater than 30 days.</p> <p>A dwelling unit (a place of residence) cannot be construed to allow accommodation of transient non-residents. There is nothing in the definition of single-family residential use that allows for transient occupancy.</p>
<p>City Code 25-2-2 DETERMINATION OF USE CLASSIFICATION. (A) The director of the Neighborhood Planning and Zoning Department shall determine the appropriate use classification for an existing or proposed use or activity. (B) In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.</p>	<p>The Director of PDR is empowered by Code to interpret use classifications, not to create new ones in contravention of Code. In addition, he must consider the characteristics and similarities of a use with other classified uses.</p>

Source Material	Commentary
<p>Use Classification Determination letter of March 12, 2011 by PDR Director Guernsey states: "[1] A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. [2] While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations, can make the minor conflicts often experienced by all neighbors more difficult to resolve."</p>	<p>While hotel/motel use is not allowed in residential zoning, it is not in dispute as a commercial use. Transient rentals are, by definition, not "residential" use since people do not reside, dwell, or live permanently in these structures. The Director of PDR cannot ignore the characteristics and similarities with other uses in his determination since Bed and Breakfast use is a more closely related transient use than Single-Family Residential.</p>
<p>25-2-6 CIVIC USES DESCRIBED. (B)(22) GROUP HOME CLASS I</p> <p>25-2-781 BED AND BREAKFAST RESIDENTIAL USE STRUCTURES CLASSIFIED.</p> <p>25-2-782 GENERAL REQUIREMENTS FOR A BED AND BREAKFAST RESIDENTIAL USE.</p> <p>25-2-783 NUMBER OF ROOMS.</p> <p>25-2-784 PARKING REQUIREMENTS.</p> <p>25-2-841 GROUP AND FAMILY HOMES.</p> <p>25-12-213 LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE. CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS.</p> <p>1301 DEFINITIONS. 1302 INSPECTIONS.</p> <p>1303 LICENSES AND PERMITS REQUIRED.</p> <p>1304 LEASING OR RENTING ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE.</p> <p>1305 APPLICATION. 1306 FEE. 1307 ISSUANCE.</p> <p>1308 LICENSE SUSPENSION. 1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL.</p> <p>1310 EXPIRATION.</p> <p>1311 TRANSFER AND NOTICE ON SALE OF PREMISES.</p> <p>1312 DISPLAY.</p>	<p>The two exceptions to transient rental use in residential zoning—Bed and Breakfast Residential and Group Residential—are heavily regulated by other Code provisions and require the owner or owner's agent to reside permanently (have a nontransient presence) on the property. The list of ordinances regulating these uses is extensive and serves as the basis for a model ordinance (see the document <i>Model Ordinance: Owner-Occupied Transient Rental</i>).</p> <p>An unregulated and unsupervised transient rental of residential property clearly contravenes the intent and purpose of Code and threatens the health, safety, and welfare of the public.</p>

Source Material	Commentary
<p>City Code CHAPTER 11-2. HOTEL OCCUPANCY TAX. 11-2-1 DEFINITIONS. In this chapter: (3) HOTEL means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or other building where a room is furnished for a consideration.</p> <p>11-2-2 TAX LEVIED; EXCEPTIONS. (A) A tax of seven percent of the consideration paid for a hotel room is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs two dollars or more each day and is ordinarily used for sleeping. (B) This chapter does not impose a tax on: (1) a person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period.</p> <p>11-2-3 COLLECTION OF TAX GENERALLY. (A) A person who owns, operates, manages, or controls a hotel or collects payment for the use or possession or for the right to the use or possession of a hotel room shall collect the tax levied by this chapter for the City. (B) A person who collects the tax shall deposit the tax proceeds into a separate liability account and may not use the tax proceeds for any purpose other than payment to the City.</p>	<p>Both the City and the State (Texas Tax Code CHAPTER 156. HOTEL OCCUPANCY TAX) recognize transient rentals as a special, taxable, commercial use of property by their Hotel Occupancy Tax (HOT) provisions.</p> <p>HOT must be collected and remitted for any hotel room occupied for less than 30 days. This chapter of Code clearly includes transient rentals in residential zoning; the City Controller's office will confirm that the owner of any room rented for more than \$2 per day—including transient rentals in residential zoning—must register, collect, and remit HOT. Since the City already collects HOT from at least 50 transient rentals in residential zoning in Austin (in addition to collections from B&B's), this serves as prima facie evidence of their "transient" use in residential zoning.</p> <p>According to the City Controller's office, all 10 B&B's in Austin pay HOT, while only 80 of the over 250 transient rentals in Austin do. B&B owners know to pay the tax because they are licensed and regulated, while other transient rentals are not. In any event, the definition of HOTEL for the purposes of this chapter in Code clearly includes transient rentals and does not require a code amendment for clarity.</p>

Source Material	Commentary
<p>City of Austin <i>Neighborhood Planning Guide to Land Use Standard</i> May 2008.</p> <p>[Page 4] Why do we practice land use planning? A key function of land use plans is to ensure that land use decisions take into account the needs of communities, the economy and the environment. A Framework for Decision Making. The plans offer guidance to city staff, Planning Commission, City Council, developers, neighbors, and others on what kinds of land uses are encouraged or discouraged in a particular area. This guidance provides direction for decision makers about future land uses.</p> <p>[Page 14] Single family detached or two family residential uses at typical urban and/or suburban densities. Purpose. (1) Preserve the land use pattern and future viability of existing neighborhoods; (3) Protect residential neighborhoods from incompatible business or industry and the loss of existing housing.</p> <p>[Page 8] Land Use Planning Principles. (2) Ensure an adequate and diverse supply of housing for all income levels; (3) Minimize negative effects between incompatible land uses; (5) Discourage intense uses within or adjacent to residential areas; (13) Avoid creating undesirable precedents; (15) Ensure similar treatment of land use decisions on similar properties; (16) Balance individual property rights with community interests and goals; (18) Promote development that serves the needs of a diverse population.</p>	<p>The Planning and Development Review Department publishes this planning guide describing land use policy.</p> <p>Given the <i>Guide's</i> stated purposes of single family residential uses and of land use planning principles, the unsupervised and unregulated transient rental of residential structures is clearly an incompatible use and sets a dangerous precedent.</p> <p>Transient rentals in residential zoning are out of character with the clear purpose and land use of residential neighborhoods: they negate community and remove housing stock.</p>

Source Material	Commentary
<p><i>Imagine Austin Comprehensive Plan Vision Statement. A Vision for Austin's Future....</i> Austin is a beacon of sustainability, social equity and economic opportunity... where community needs and values are recognized.... Austin is livable. One of Austin's foundations is its safe, well-maintained, stable, and attractive neighborhoods and places whose character and history are preserved. Development occurs... while protecting and enhancing neighborhoods... in a manner friendly to families with children, seniors, and individuals with disabilities. Clear guidelines... provide certainty for residents and the business community.... Austin values and respects its people. People across all parts of the city and of all ages and income levels live in safe, stable neighborhoods with a variety of affordable and accessible homes.</p>	<p>A vision statement is "a reflection of community values and aspirations, a consensus of public opinion on key issues, and a description of the desired future character of the community". Residents of Austin have volunteered thousands of hours to help City staff craft a responsive Comprehensive Plan.</p> <p>Some have questioned the sincerity of the collaborative spirit and the validity of the planning process. By creating a transient single-family residential use by fiat that is contrary to Code, State statute, PDR Planning Guide, and Comprehensive Plan, the Director of PDR demonstrates that the Comprehensive Plan is a sham.</p> <p>Austinites cannot continue to work seriously on a Plan rendered a sham by allowing an unsupervised and unregulated transient residential use.</p> <p>The Vision Statement points to stable neighborhoods for the benefit of Austin residents. Unsupervised, unregulated, and clearly illegal transient uses destabilize and destroy Austin neighborhoods.</p>

Attachment C: Draft Model Ordinance—Owner-Occupied Transient Rental Use

Unsupervised and unregulated transient residential use endangers public health, safety, and welfare, and destroys the character of family-oriented neighborhoods. It is contrary to the very notion of “residential” as places where people live on a permanent basis. A model ordinance for Owner Occupied Transient Rental (OOTR) use, based in large part on City Code for the similar Bed and Breakfast use, is shown in the table below. The amended or changed Code sections are highlighted.

It is reasonable to allow property owners to occasionally rent out their own houses during events such as SXSW or to swap houses for short vacation stays. However, in order to protect and preserve our neighborhoods, safeguards must be in place. This model ordinance was crafted to allow home owners flexibility in the use of their property while insuring the integrity and character of Austin neighborhoods and causing the least amount of disruption and burden to adjacent residents.

In this model ordinance, transient rental residential use by a home owner is limited to no more than two separate rentals in a calendar year, and with a combined duration of no more than 30 days, since any more is too disruptive of neighborhood life and is really not a residential use of the property.

In addition, transient rental use by investors, rather than home owners, is prohibited since it removes housing stock, which is contrary to the City’s neighborhood planning guidelines, and to the express purpose of residential zoning (City Code 25-2-51). Of course, rental of any residential property for more than 30 days (nontransient) is not covered by this model ordinance since it is already—and has always been—an allowed residential use in City Code.

OOTR Amendments	Source Notes
<p>25-2-3 RESIDENTIAL USES DESCRIBED.</p> <p>(B) Residential use classifications are described as follows:</p> <p>(15) OWNER-OCCUPIED TRANSIENT RESIDENTIAL use is the unsupervised use of a residential structure to provide occasional furnished guest accommodations on a paying basis.</p>	<p>Adds an OOTR residential use to the existing 14 residential uses in this section of City Code</p>
<p>Subpart C. Requirements for an Owner-Occupied Transient Use.</p> <p>25-2-788 OWNER-OCCUPIED TRANSIENT RESIDENTIAL USE STRUCTURES CLASSIFIED.</p> <p>(A) Any conforming residential structure may be used as an owner-occupied transient rental use in any residential base district as long as the occupancy limits set by Section 25-2-511 (<i>Dwelling Unit Occupancy Limit</i>) for the property are not exceeded before or during the transient rental.</p> <p>(B) The use of a residential unit for an owner-occupied transient rental use shall not violate any applicable conditions, covenants, or other restrictions on real property.</p>	<p>Adds a new Subpart C in Code based on the content from <i>Subpart B. Requirements for a Bed and Breakfast Use</i>.</p> <p>Covenants clause from Monterey County, CA zoning ordinance Title 21</p>

OOTR Amendments	Source Notes
<p>25-2-789 GENERAL REQUIREMENTS FOR AN OWNER-OCCUPIED TRANSIENT RESIDENTIAL USE.</p> <p>(A) A person may own only one owner-occupied transient residential use facility.</p> <p>(B) The owner must reside in the owner-occupied transient residential use structure or in another residential structure on the lot on which the structure is located.</p> <p>(C) The owner of an owner-occupied transient residential use structure must own the land on which the structure is located.</p> <p>(D) The owner must obtain a license to operate an owner-occupied transient residential use structure. The license must be renewed annually. The City Manager or his or her designee shall have the authority to impose additional standards and/or conditions on these licenses as necessary to achieve the objectives of this Section and other applicable provisions of Code.</p> <p>(E) The owner of an owner-occupied transient rental must vacate the premises during the term of the rental. In the event the owner does not vacate the premises during a transient rental, the rental shall be deemed an unlicensed bed and breakfast use and the applicable Code and remedies shall apply.</p> <p>(F) Concurrent transient rentals of any or all structures on the lot of an owner-occupied transient rental are prohibited.</p> <p>(G) An owner-occupied transient residential use is limited to no more than two separate, non-concurrent rentals in a calendar year and with a combined duration of no more than 30 days. There is not a limit on the number of nontransient, non-concurrent rentals exceeding 30 days each (other than that the owner must maintain the property as his or her residence), and these nontransient rentals do not count toward the two transient rental limit, or the 30 day combined duration limit, in a calendar year.</p> <p>(H) An owner-occupied transient residential use must be located in the principal residential structure on the lot. Transient (30 days or less) rental of any other structure on the lot, not in conjunction with the rental of the principal residential structure, is prohibited unless allowed elsewhere in Code as a commercial hotel/motel use for the lot.</p> <p>(I) A house number, visible from the street, shall be maintained.</p> <p>(J) Meal service and/or the provision of food and/or beverages are prohibited.</p> <p>(K) A register of guests must be maintained.</p> <p>(L) The owner of an owner-occupied transient rental shall furnish the name, address, and telephone number(s) of a local contact person on the license application and made available for public review. The license holder shall promptly notify the code official of any change in the local contact person's address or telephone number. The local contact person shall be available 24 hours a day to respond to tenant and neighborhood questions or concerns and to otherwise be responsible for assuring that the transient rental unit complies with the requirements of the license issued and the provisions of this Section and other applicable provisions of Code.</p> <p>(M) The owner or owner's agent shall display on the exterior of an owner-occupied transient rental a notice provided by the City containing a 24-hour 7-day phone number for the contact person responsible for the facility to take complaints regarding its operation. The exterior display will also contain the number of bedrooms, maximum number of overnight occupants permitted to stay in the unit, and the maximum number of vehicles for overnight occupants. The notice shall be in plain view of the general public and/or common areas and shall be maintained in good condition at all times.</p> <p>(N) Noise or other disturbance outside the short term rental unit is prohibited</p>	<p>Additional standards clause from Encinitas, CA ordinance Chapter 9.38</p> <p>House # clause from Ordinance #69 from Tillamook County, OR</p> <p>Contact person clause from Monterey County, CA zoning ordinance Title 21</p> <p>Exterior display clause from Encinitas, CA ordinance Chapter 9.38</p>

OOTR Amendments	Source Notes
<p>after 10:00 pm. This includes, but is not limited to, swimming pools, hot tubs, decks, portals, porches, balconies, or patios. All occupants of an owner-occupied transient rental shall be informed in writing by the owner or owner's agent of relevant City ordinances including, but not limited to, the nuisance, noise, and water conservation ordinances.</p> <p>(O) The owner of an owner-occupied transient rental shall use best efforts to insure that the occupants and/or guests do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of City Code or any applicable law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol, or the use of illegal drugs. Upon receipt of a complaint, the owner, owner's agent, or contact person shall attempt within 20 minutes to contact the occupants of an owner-occupied transient rental by phone or in person concerning the conduct of an occupant, and within 24 hours of the initial call use best efforts to prevent the recurrence of such conduct by the occupants and to take corrective action to address any violation. Failure to respond in a timely manner is grounds for immediate eviction of the occupants of the owner-occupied transient rental by the police. It is not intended that the property owner, local agent, or contact person act as a peace officer or place himself or herself in an at-risk situation.</p> <p>(P) A person may not structurally alter the exterior of an owner-occupied transient residential use structure to change the existing residential character of the structure.</p> <p>(Q) Each owner-occupied transient residential use structure must comply with this section and all other applicable Code requirements.</p> <p>25-2-790 OCCUPANCY LIMITS.</p> <p>(A) The number of occupants of an owner-occupied transient rental shall not exceed the lesser of:</p> <ol style="list-style-type: none"> (1) the limits set by Section 25-2-511 (<i>Dwelling Unit Occupancy Limit</i>) for the entire property and for each residential unit on the property, or (2) two times the number of parking spaces on the property plus, only if available, one parking space directly in front of the property on the street. 	<p>Noise clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p> <p>Complaint clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p> <p>Complaint clause from Encinitas, CA ordinance Chapter 9.38</p> <p>Complaint clause from Ordinance #69 from Tillamook County, OR</p>
<p>25-2-791 PARKING REQUIREMENTS.</p> <p>(A) Pervious pavers may be used as driveway and parking surface materials within the property boundaries.</p> <p>(B) Not more than 25 percent of the parking surface may be constructed of gravel.</p> <p>(C) A guest parking space is not permitted in the front yard of an owner-occupied transient residential use structure.</p> <p>(D) At least one parking space shall be available on the property for use by occupants of the owner-occupied transient rental.</p> <p>(E) The property owner shall limit the number of vehicles of overnight occupants to the number designated in the license which shall not exceed the number of designated on-site parking spaces plus one. All designated on-site parking spaces shall be made available for the vehicles of occupants of an owner-occupied transient rental.</p> <p>(F) Occupants shall not park recreational vehicles on site or on the street of an owner-occupied transient rental.</p>	<p>Parking clause from Encinitas, CA ordinance Chapter 9.38</p>

OOTR Amendments	Source Notes
<p>25-2-792 SOLID WASTE MANAGEMENT.</p> <p>Trash and refuse from an owner-occupied transient rental shall not be left or stored within public view except from sunset of the day prior to trash pick-up until up to midnight on the day designated for trash pick-up. All trash will be in approved receptacles.</p>	<p>Garbage clause from Encinitas, CA ordinance Chapter 9.38</p>
<p>25-2-793 OCCUPANT SAFETY AND WELFARE.</p> <p>(A) An owner-occupied transient rental shall comply with all regulations insuring the safety, health, and welfare of occupants and adjacent neighbors including but not limited to:</p> <ol style="list-style-type: none"> (1) At least one functioning fire extinguisher. (2) A properly maintained smoke detector in each sleeping area, outside each sleeping area, and in each additional story and basement without a sleeping area. (3) At least one operable emergency escape and rescue opening for each sleeping area. 	<p>Safety clauses from Ordinance #69 from Tillamook County, OR</p>
<p>25-2-794 INSURANCE.</p> <p>The owner of an owner-occupied transient rental shall maintain adequate property insurance coverage for the rental unit. Proof of insurance shall be required at time of license issuance and such other times as may be requested by the City.</p>	<p>Insurance clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p>
<p>25-2-795 CERTAIN ADVERTISING PROHIBITED.</p> <p>(A) Advertising the street address of an owner-occupied transient rental through signs, billboards, television, radio, newspapers, or Internet is prohibited.</p> <p>(B) Availability of an owner-occupied transient rental unit to the public shall not be advertised on site.</p>	<p>Availability clause from Monterey County, CA zoning ordinance Title 21</p>
<p>25-2-796 RECORDS AVAILABILITY</p> <p>The owner or owner's agent of an owner-occupied transient rental shall make available to the City for its inspection all records relating to the operation of the owner-occupied transient rental in order to determine compliance with all applicable Codes.</p>	<p>Records clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p>
<p>25-2-797 RENTAL OF AN OWNER-OCCUPIED TRANSIENT RESIDENTIAL USE FACILITY FOR GATHERINGS.</p> <p>(A) The use of an owner-occupied transient residential use facility as a rented site for a gathering, including a wedding, is a conditional use.</p> <p>(B) A conditional use permit may be approved only if:</p> <ol style="list-style-type: none"> (1) the owner-occupied transient residential use structure is located in a multifamily residence (limited density) or less restrictive base district; and (2) a certificate of occupancy has been issued that authorizes the use of the site for a gathering. <p>(C) The maximum number of attendees at a gathering held under this section equals four times the total of the number of parking spaces on the property that are not required for other uses on the property plus two spaces on the street.</p> <p>(D) Amplified live outdoor music is prohibited at a gathering.</p> <p>(E) A gathering must end at 9:00 p.m. on Sunday through Thursday and at 10:30</p>	

OOTR Amendments	Source Notes
<p>p.m. on Friday and Saturday.</p> <p>(F) The Land Use Commission may not approve an increase of the maximum number of attendees, authorize amplified live outdoor music, or extend the hours of operation through the conditional use process.</p> <p>(G) The Land Use Commission may reduce the hours of operation.</p>	
<p>25-12-213 LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE.</p> <p>CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, <u>OWNER-OCCUPIED TRANSIENT RENTAL</u>, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS</p> <p>1301 DEFINITIONS</p> <p>The following words and terms shall, for the purposes of this chapter, have the meanings shown herein.</p> <p>BED AND BREAKFAST. The use of an owner-occupied single-family residential structure to provide rooms for temporary lodging for overnight guests in return for compensation.</p> <p>BOARDING HOUSE. A building other than a hotel, where lodging and meals are provided for more than six unrelated persons in return for compensation. When used in this chapter, the term Boarding House includes a transient boarding house.</p> <p>HOTEL/MOTEL. A building or a part of a building, in which there are guest rooms, rooming units, or apartments which may be rented on a daily basis and are used primarily for transient occupancy, and for which desk service is provided. In addition, one or more of the following services may be provided: maid, telephone, bellboy, or furnishing of linen. When used in this chapter, the term hotel includes a motel.</p> <p><u>OWNER-OCCUPIED TRANSIENT RENTAL</u>. The unsupervised use of an owner-occupied single-family residential structure to provide furnished accommodations for overnight guests for no more than 30 days in a calendar year in return for compensation which may include barter and exchange.</p> <p>ROOMING HOUSE. A building, other than a hotel, where lodging for more than six unrelated persons is provided without meals in return for compensation.</p> <p>1302 INSPECTIONS</p> <p>The code official shall make inspections to determine the condition of boarding houses, hotels, rooming houses, <u>owner-occupied transient rental</u>, and bed and breakfast establishments located within the City, to ensure compliance with this chapter and other applicable laws. For the purpose of making inspections, the code official or the code official's representative may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and premises on presentation of the proper credentials. The owner or operator of a boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment, or the person in charge, shall give the code official free access to the building, dwelling unit, guest room and its premises, at all reasonable times, for the purpose of inspection, examination, and survey.</p> <p>1303 LICENSES AND PERMITS REQUIRED</p> <p>No person may operate a boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment unless a license for the operation, in the name of the operator and for the specific dwelling used, has been issued by the code official and is currently valid and in good standing. Unless specifically exempted by the provisions of Chapter 10-3 (Food and Food Handlers) of the City Code, each boarding house and bed and breakfast establishment is required to have a permit as a food service establishment issued by the Health Authority.</p>	<p>Adds OOTR to the existing regulations in Code for hotel, boarding house, rooming house, and bed and breakfast</p> <p>This definition of an OOTR is based on the definition above of a bed and breakfast, but also regulates short-term home exchanges or swaps</p>

OOTR Amendments	Source Notes
<p>1304 LEASING OR RENTING ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE, OWNER-OCCUPIED TRANSIENT RENTAL, OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE</p> <p>An owner, manager, or person in control of a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment commits an offense if the owner or person leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter.</p> <p>Each day that an owner, manager, or person in control of the property leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter is a separate occurrence. An offense under this section is a class C misdemeanor, punishable by a fine not to exceed \$500 per offense, per occurrence, unless proof of a culpable mental state is proven. If proof of a culpable mental state is demonstrated, an offense under this section is punishable by a fine not to exceed \$2000 per occurrence.</p> <p>Operation of an owner-occupied transient rental without a license subjects the occupants of the property to immediate eviction by the police.</p> <p>1305 APPLICATION</p> <p>An application for a license required by this chapter must be in writing and submitted to the code official.</p> <p>1306 FEE</p> <p>Each application for a rooming house, hotel, boarding house, owner-occupied transient rental, or bed and breakfast establishment license must be accompanied by the payment of a fee in an amount established by separate ordinance, to be prorated on a quarterly basis.</p> <p>1307 ISSUANCE</p> <p>A boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment license shall be issued by the code official after the code official determines that the owner or operator has complied with all applicable ordinances and rules. A license shall not be issued by the code official for any applicant or location in the absence of proof of the applicant or location's substantial compliance with all applicable local hotel occupancy tax rules and regulations. A license shall not be issued by the code official for any applicant of an owner-occupied transient rental without written acknowledgement by the applicant of the rental term limits of no more than two separate transient rentals in a calendar year and with a combined duration of no more than 30 days.</p> <p>1308 LICENSE SUSPENSION</p> <p>Whenever the code official finds on inspection of the physical premises or review of applicable records of any boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment that conditions or practices exist that violate any provision of the International Property Maintenance Code, City Code, or any rule or regulation adopted under this code, the code official shall give written notice to the owner of the property and the operator of the boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment that unless the violations are corrected by an identified deadline, the boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment license shall be suspended. At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the boarding house, hotel, rooming house, owner-occupied transient rental, or</p>	<p>Eviction clause from Encinitas, CA ordinance Chapter 9.38</p> <p>OOTR license holders are informed of the Hotel Occupancy Tax requirements and rental term limits at the time of issuance</p> <p>This section also handles the case where an OOTR owner exceeds the two rental/combined total 30 day limit per calendar year</p>

OOTR Amendments	Source Notes
<p>bed and breakfast establishment and, if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended. On receipt of notice of suspension, the licensee shall immediately stop operation of the boarding house, hotel, <u>owner-occupied transient rental</u>, rooming house, or bed and breakfast establishment, and no person may occupy for sleeping or living purposes any rooming unit therein. The notice required by this subsection shall be served in accordance with the notice provisions of applicable law.</p> <p>1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL</p> <p>The following actions of the code official may be appealed to the Building and Standards Commission as provided in this Code:</p> <ol style="list-style-type: none"> 1. the denial of an application for a license to operate a boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment; 2. the suspension of a license to operate a boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment; 3. the issuance of a notice that a license to operate a boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment will be suspended unless existing conditions or practices are corrected. <p>An appeal filed under this section must be filed with the code official no later than the 20th day following the date on which the license was denied or suspended, or notice of violation was received. The appeal must be set for hearing before the Commission on the next available agenda date following receipt of the appeal and must be heard following setting on the scheduled agenda if a quorum is present at the hearing, unless the appellant requests a later date and waives the scheduled hearing.</p> <p>1310 EXPIRATION</p> <p>Each boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, and bed and breakfast establishment license expires at the end of the calendar year for which it is issued, unless suspended or revoked as provided in this chapter.</p> <p>1311 TRANSFER AND NOTICE ON SALE OF PREMISES</p> <p>A license issued under this chapter is not transferable. Every person holding a license shall give written notice to the code official no later than 10 days before the conveyance, transfer, or any other disposition of the ownership of, interest in, or control of any boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment. The notice must include the name and address of the person succeeding to the ownership or control of the boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment.</p> <p>1312 DISPLAY</p> <p>The license required by this chapter must be displayed at all times in a conspicuous place designated by the code official within each boarding house, hotel, rooming house, or bed and breakfast establishment, <u>with the exception of an owner-occupied transient rental where the license required by this chapter shall be displayed for the week before, during, and the week after each transient rental of the property</u></p>	